

No. 10-19-00196-CR  
IN THE  
COURT OF APPEALS FOR THE  
TENTH SUPREME JUDICIAL DISTRICT  
SITTING AT WACO, TEXAS

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IJAH IWASEY BALTIMORE,

*APPELLANT*

V.

THE STATE OF TEXAS

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AN APPEAL OF A CONVICTION FOR  
UNLAWFUL CARRYING OF A WEAPON  
CAUSE No. 2017-449-C2  
FROM THE 54<sup>TH</sup> DISTRICT COURT OF  
MCLENNAN COUNTY, TEXAS

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**STATE'S BRIEF**

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## **Issue Presented**

### *Appellant's Issues Presented:*

1. Whether the evidence is legally insufficient to support the conviction

## **Summary of Argument**

Multiple witnesses identified the parking lot as the parking lot of the Crying Shame, a premises licensed to sell alcohol. The detective in the case specifically testified that the parking lot was part of the premises of the Crying Shame. The photograph of Appellant's motorcycle shows the location of the offense and parking lot being directly in front of the entry to the Crying Shame. The evidence is sufficient such that a rational jury could conclude that the parking lot was part of the premises of the Crying Shame and that Appellant unlawfully carried a firearm on such premises.

## Argument

### 1) The Evidence is legally sufficient to support Appellant's conviction

#### LAW

Evidence is legally sufficient to support a conviction if, after assessing all the evidence in the light most favorable to the verdict, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). An appellate court reviews all of the evidence, whether it was properly or improperly admitted. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Direct and circumstantial evidence are equally probative, and circumstantial evidence alone can be sufficient to establish guilt. *Id.*; *Patrick v. State*, 906 S.W.2d 481, 488 (Tex. Crim. App. 1995).

It is the factfinder's duty "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. We "determine whether the necessary inferences are reasonable based upon the combined and

cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007). When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination. *Jackson*, 443 U.S. at 326.

Direct and circumstantial evidence are treated equally:

"Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper*, 214 S.W.3d at 13. "It is the State's burden to prove each element of the offense beyond a reasonable doubt, not to exclude every conceivable alternative to a defendant's guilt." *Merritt v. State*, 368 S.W.3d 516, 526 (Tex. Crim. App. 2012) (citing *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993) (explaining that "the evidence is not rendered insufficient simply because appellant presented a different version of the events"))).

A person commits the offense of Unlawful Carrying Weapons if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun; and

(2) is not:

(A) on the person's own premises or premises under the person's control; or

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

Tex. Pen. Code Ann. § 46.02(a). The offense is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages. Tex. Pen. Code Ann. § 46.02(c). The parking lot of a licensed premises is a part of the “premises” pursuant to section 11.49(a) of the Alcoholic Beverage Code. *Richardson v. State*, 823 S.W.2d 773, 776 (Tex. App.—Fort Worth 1992, no pet.).

## **ARGUMENT**

### *Factual Overview*

Appellant was convicted of unlawfully carrying a weapon (firearm) on a premise that is licensed or issued a permit by this state for the sale of



alcoholic beverages. 1 CR 71. Davina Cook testified as the State's first witness. 6 CR 9. She testified that she was out drinking with her cousin and a guy that she was seeing, James "Ty" Johnson at Chapter 11. 6 CR 11. Ty left and went to Crying Shame and Davina went over there as well. 6 RR 12. Crying Shame is a bar in Waco, McLennan County, Texas. 6 RR 12. When Davina arrived, Ty was finishing a drink and eating popcorn. 6 RR 12. They were getting ready to leave because the bar had cut the lights on. 6 RR 13. When she leaves the bar, she sees Appellant sitting on a motorcycle and he was staring at her, Ty, and her cousin. 6 RR 13. Ty pulled over to where Appellant was and Appellant got off the motorcycle. 6 RR 14. Ty pulls up by the doors to the bar, about a spot or two in between where Appellant was parked at. 6 RR 17. Appellant got off his motorcycle and put his hands in his jacket. 6 RR 17. The door is the door you walk out of and into the bar. 6 RR 18. Appellant is the only person out of his vehicle or off his motorcycle. 6 RR 19. Ty attempts to back up slowly by Appellant sticks his foot by the tire. 6 RR 19. Appellant tells Ty he is about to run over his

foot and Davina tells Ty that Appellant's foot is under the tire so Ty pulls the car slowly forward so Appellant can move his foot. 6 RR 20.

Davina could see Appellant reach in his pocket and sees the gun get hung up on the jacket when Appellant was pulling it out. 6 RR 20.

Appellant then pulls out the gun and sticks it in Ty's face and says, "Bitch, I'm tired of you playing with me." 6 RR 20. This all took place in the

parking lot of the Crying Shame. 6 RR 21. This was on the property of the

Crying Shame. 6 RR 21. In the front of the Crying Shame. 6 RR 21. Davina's

cousin pushed her out of the way and grabbed Appellant's arm and stuck

his arm down and pinned Appellant against Ty's car. 6 RR 22. Her cousin

fought Appellant for control over the gun and her cousin pistol-whipped

Appellant with his own gun. 6 RR 22. Her cousin then threw the gun on the

roof of the Crying Shame. 6 RR 22. Davina identified State's Exhibits 7 and

8 as depicting Appellant's motorcycle positioned in front of the building. 6

RR 31. State's Exhibits 7 and 8 were admitted without objection. 6 RR 33.

The exhibits show Appellant's motorcycle directly in front of the Crying

Shame. 6 RR 34.

Officer Billy Gann with Waco P.D. was the State's second witness. 6 RR 37. On November 25, 2016 he got a call to respond to the Crying Shame. 6 RR 39. The Crying Shame is a bar in McLennan County. 6 RR 40. The call was for a disturbance involving a fight and one of the individuals had a gun. 6 RR 40. When he arrived there were three black males standing on the sidewalk in front of and just to the left of the door. 6 RR 40. He determined that there was an altercation outside of the bar and one of the subjects pulled a handgun out of his jacket and the gun was thrown on top of the building. 6 RR 41. The altercation where Appellant pointed a gun at Ty Johnson all happened in the parking lot of the Crying Shame. 6 RR 43. Crying Shame is a bar licensed to sell alcohol through TABC. 6 RR 44.

James "Ty" Johnson was the State's next witness. 6 RR 47. While at the Crying Shame he was Appellant. 6 RR 49. When he was leaving the Crying Shame Appellant was sitting at the front of the parking lot on his motorcycle. 6 RR 50. This was the parking lot of the Crying Shame. 6 RR 50. He saw Appellant get off his motorcycle and approach him at the window of his car. 6 RR 51. Appellant then took out a handgun and pointed it at Ty.

6 RR 51. Davina's cousin, Will, approached the car and Appellant and Will started tussling over the gun. 6 RR 51-52. Ty got out of the car and started fighting with Appellant as well. 6 RR 52. After Ty and Will got the gun away from Appellant, Appellant was still trying to fight with them to get the gun back. 6 RR 52. The whole tussle took place in the parking lot of the Crying Shame, a bar in McLennan County. 6 RR 52. When Ty left the bar Appellant's motorcycle was backed in right in front of the door at the Crying Shame and Appellant was sitting on the bike. 6 RR 56.

Brandon Garrett with Waco P.D. was the next witness for the State. 6 RR 66. He testified that the Crying Shame is a bar in McLennan County that is licensed to sell alcohol by the State of Texas and TABC. 6 RR 69. He responded to a call that there was a weapon being possibly involved at the bar. 6 RR 70. When he arrived, the subjects involved in the altercation were outside. 6 RR 71. He learned that the weapon was on the roof of the bar. 6 RR 72. The fire department came to the scene and he used their ladder to go on the roof to recover the firearm. 6 RR 73. Officer Garrett identified the handgun that he found on the roof of the Crying Shame. 6 RR 75. The

firearm was loaded with a round in the chamber. 6 RR 75. He identified the serial number for the firearm. 6 RR 78. Appellant did not own or work at the Crying Shame so the property or premises was not under his control. 6 RR 87.

Detective Joe Williams testified about the firearm found on the roof was owned by Appellant based on the ATF report when he ran the firearm serial number. 6 RR 94. He further testified that the Crying Shame is a bar in McLennan County, licensed to sell alcohol by the TABC. 6 RR 97. He testified, without objection, that the parking lot is included as part of the premises of the Crying Shame. 6 RR 97.

Appellant testified during the defense's case in chief. 6 RR 102. He identified the motorcycle parked outside of the Crying Shame as his motorcycle. 6 RR 103. Appellant confirmed the testimony of Ty Johnson regarding a previous incident a couple months before this offense. 6 RR 105. He confirmed that he saw them earlier at Chapter 11. 6 RR 106.

Appellant admitted that the gun in State's Exhibit 1 is his firearm. 6 RR 107. Appellant claimed that he never saw Ty Johnson at the Crying Shame until

he was blind sided by them. 6 RR 110. Appellant claimed that they approached him on his motorcycle. 6 RR 110. Appellant claimed they then hit him and a fist fight broke out. 6 RR 110. Appellant claimed the fight started right at the location of his motorcycle. 6 RR 112-113. Appellant claimed that the firearm started to drop on the ground during the fight and he just went to adjust it. 6 RR 113.

*The evidence is legally sufficient to show he was on the premises*

Appellant argues that the evidence is legally insufficient to show that the parking lot was part of the premises of the Crying Shame bar. App. Br. at 8. Appellant's argument fails to consider the evidence showing that the parking lot was connected to the Crying Shame. First, State's Exhibit #8 shows the location of Appellant's motorcycle, which he was sitting on when Davina, Ty, and Will came out of the Crying Shame. State's Exhibit #8 shows that the parking lot, and specifically the spot where Appellant's motorcycle was parked is within feet of the entrance to the Crying Shame. See State's Exhibit #8. The testimony also showed that Ty pulls up by the doors to the bar, about a spot or two in between where Appellant was

parked at. 6 RR 17. The altercation all took place in the parking lot of the Crying Shame. 6 RR 21. This was on the property of the Crying Shame. 6 RR 21. In the front of the Crying Shame. 6 RR 21. Davina's cousin then threw the gun on the roof of the Crying Shame. 6 RR 22. The jury could infer that in order to throw the gun onto the roof, the parking lot was close enough to throw the gun on the roof. Davina identified State's Exhibits 7 and 8 as depicting Appellant's motorcycle positioned in front of the building. 6 RR 31. State's Exhibits 7 and 8 were admitted without objection. 6 RR 33. The exhibits show Appellant's motorcycle directly in front of the Crying Shame. 6 RR 34. The location of the incidence is in the parking lot that is connected to the front of the bar, with the entrance to the bar leading directly out to the parking spot that Appellant was parked. The jury could have rationally inferred that the parking lot identified in the picture and testified to being the location of the incident was connected to and part of the premises of the Crying Shame.

Further, the testimony of Officer Gann showed that the altercation where Appellant pointed a gun at Ty Johnson all happened in the parking

lot of the Crying Shame. 6 RR 43. Crying Shame is a bar licensed to sell alcohol through TABC. 6 RR 44. The testimony referred to the parking lot as the parking lot of the Crying Shame. The identifying of the parking lot as being the parking lot of the Crying Shame is evidence on which the jury could have relied in finding that it was the same premises as the bar. Ty Johnson testified that when he was leaving the Crying Shame Appellant was sitting at the front of the parking lot on his motorcycle. 6 RR 50. This was the parking lot of the Crying Shame. 6 RR 50. Again, the testimony of this witness identified that parking lot as belonging to the Crying Shame. This is more evidence that the jury could rely on in concluding that the parking lot is within the premises of the Bar. Further, Detective Williams specifically testified, without objection, that the parking lot is included as part of the premises of the Crying Shame. 6 RR 97. The jury could further rely on Detective Williams specific testimony that the parking lot is part of the premises to conclude that the parking lot is part of the premises of the Crying Shame.



Appellant attempts to distinguish *Richardson* by stating that the holding in *Richardson* that the parking lot is part of the premises is unsupported and of little consequence because the evidence showed that defendant carried the handgun in the store. App. Br. at 11 citing *Richardson*, 823 S.W.2d at 776. However, Appellant's attempt falls short. *Richardson* was analyzing the sufficiency of the evidence regarding his unlawful carrying of a weapon on a license premises. *Id.* at 776. The Court found that the parking lot of the convenience store was part of the premises in finding that the evidence was legally sufficient in looking just at the possession inside of the vehicle. *Id.* The factual overview in the *Richardson* opinion states that "The officers then went outside to the car in the parking lot." *Id.* at 775. In the sufficiency analysis they refer to the location of the vehicle as on the Rainbow Giant parking lot. *Id.* at 776. There is more evidence in this case regarding the parking lot of the Crying Shame. Testimony identified the parking lot as being part of the premises of the Crying Shame. 6 RR 97. Additionally, State's Exhibit #8 shows that the property from the bar into

the parking lot where Appellant's motorcycle was located is a continuous piece of property with no breaks or barriers.

Additionally, the First Court of Appeals relied on *Richardson* in determining the parking lot was part of premises based on the testimony from the officers that it was the parking lot of the Boomerang Club. *George v. State*, 01-94-00585-CR, 1995 WL 155535, at \*2 (Tex. App.—Houston [1st Dist.] Apr. 6, 1995, no pet.) (not designated for publication). Likewise, the Amarillo Court of Appeals found the evidence sufficient based on a parking lot that is described almost identically to the parking lot depicted in State's Exhibit # 8 in Appellant's case. *Romero v. State*, 07-06-0198-CR, 2008 WL 2369691, at \*3 (Tex. App.—Amarillo June 11, 2008, no pet.) (not designated for publication) (holding the officers' testimony indicates the bar's parking area is in front of the building and describes the scene as the officers first saw appellant, he said, "that front door of the building has a sidewalk that runs along the building, and then there's basically a parking lot" was sufficient to show the parking lot was part of the premises of the bar).

The evidence in Appellant's trial shows; the parking lot was identified by multiple witnesses as being the parking lot of the Crying Shame, the parking lot was specifically identified as part of the premises of the Crying Shame by the detective in the case, and the photographic evidence shows the parking lot was connected to the entry way for the Crying Shame. Therefore, a rational jury could have concluded that the parking lot was part of the premises of the Crying Shame and find Appellant guilty as charged in the indictment.

### **Prayer**

For the foregoing reasons, the State of Texas prays that this Honorable Court affirm the conviction and punishment of IJAH IWASEY BALTIMORE for the offense of UNLAWFUL CARRYING OF A WEAPON, and prays for such other and further relief as may be provided by law.

Respectfully Submitted:

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### **Certificate of Service**

I certify that I caused to be served a true and correct copy of this State's Brief by Electronic Service on Appellant's attorney of record, Jessica Freud, at Jessi@Fruedlaw.com.

DATE: 02/10/2020

/s/ GABRIEL PRICE

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